

**REMARKS**

**I. Status of the Claims**

While neither agreeing nor disagreeing with the Examiner's rejections, solely to expedite prosecution of this application, claim 1 has been amended to incorporate the language of claim 2. Claim 2 has now been cancelled. Claims 5 and 10 have been amended. Support for the amendments to the claims can be found in the claims as originally filed and throughout the specification. No new matter has been added by the present amendment. Upon entry of this amendment, claims 1 and 3-10 will be pending.

**II. Objection to the Specification**

The abstract of the disclosure is objected to because it is a single sentence fragment and does not comprise a complete sentence. This objection has been rendered moot by the present amendment. Applicants respectfully request this rejection be withdrawn.

**II. Rejection Under 35 U.S.C. § 112, second paragraph**

Claims 1-10 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 1-2, 5, 7-8 and 10 stand rejected. Applicants respectfully traverse this rejection.

With respect to claims 1-2, and 7-8, the term "adequate" does not render the claims indefinite as it is part of the term "duration of adequate immune memory" which is defined in on page 7, lines 11-13 of the Specification. Applicants respectfully request that this rejection be withdrawn.

With respect to claims 5 and 10, the rejection has been rendered moot by the present amendment of the claims. Applicants respectfully request that this rejection be withdrawn.

**III. First Rejection Under 35 U.S.C. § 102(b)**

Claims 1, 3-4 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Olson et al., Am. J. Vet. Res. Sept. 1988, Vol 49, no. 9, pages 1460-1466 ("Olson"). This rejection has been rendered moot by the amendment of claim 1 to include the language of

non-rejected claim 2 as set forth above. Applicants respectfully request this rejection be withdrawn.

**IV. Second Rejection Under 35 U.S.C. § 102(b)**

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Volti et al., *Eur. J. Epidemiol.* (1995), Vol. 11, pages 217-219 (“Volti”). This rejection has been rendered moot by the amendment of claim 1 to include the language of non-rejected claim 2 as set forth above. Regardless, Volti would not anticipate Applicants’ claimed invention since it is directed to the study of humans and not to animals. Since Volti fails to teach or suggest a recited claim element, Volti would neither anticipate nor render obvious Applicants’ claimed invention. Applicants respectfully request this rejection be withdrawn.

**V. Rejection Under 35 U.S.C. § 102(a)**

Claim 1 stands rejected under 35 U.S.C. § 102(a) as being anticipated by Yang et al., *J. Epidemiol.*, (Aug. 1999), Vol. 9, No. 4, pages 209-215 (“Yang”). This rejection has been rendered moot by the amendment of claim 1 to include the language of non-rejected claim 2 as set forth above. Regardless, Yang would not anticipate Applicants’ claimed invention since it is directed to the study of humans and not to animals. Since Yang fails to teach or suggest a recited claim element, Yang would neither anticipate or render obvious Applicants’ claimed invention. Applicants respectfully request this rejection be withdrawn.

**VI. First Rejection Under 35 U.S.C. § 103(a)**

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Olson et al., *Am. J. Vet. Res.* Sept. 1988, Vol 49, no. 9, pages 1460-1466 (“Olson”), in view of Simonsen et al., *Vaccine*, (1987), Vol.5, no. 2, pp. 115-122 (“Simonsen”) and Dodds, US Patent No. 6,287,254 (“Dodds”). Applicants respectfully traverse this rejection.

Applicants contend that the present invention is not *prima facie* obvious in view of the cited references. The Board of Patent Appeals and Interferences has stated that “to establish a *prima facie* case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the

applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention.” Ex parte Levengood, 28 USPQ2d 1300, 1301 (BOPAI 1993). Not only must there be evidence of motivation, but also the skilled worker must have an expectation that the combination of teachings would be successful.

Here, none of the references alone or in combination provide the requisite teaching or suggestion to modify their teachings and arrive at Applicants’ claimed invention with any reasonable expectation of success. Specifically none of the references teach or suggest the use of a duration of adequate immune memory estimation equation derived by a logistic regression analysis of the first and the second indicators and the vaccine administration record. The Examiner has recognized this deficiency in Olson. Office Action, page 8, lines 1-3. As stated above, Simonsen is directed to the study of humans and is silent as to animals and thus would not remedy any of the deficiencies of Olson. Dodds also fails to remedy the deficiencies of Olson since it also does not teach or suggest the derivation of an adequate immune memory estimation equation from logistic regression analysis of the first and second indicators and the vaccine administration record for determining a duration of adequate immune memory, as claimed. Applicants’ claimed invention is not obvious in view of the cited references. Applicants respectfully request this rejection be withdrawn.

#### **VII. Second Rejection Under 35 U.S.C. § 103(a)**

Claims 1, 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Simonsen et al., *Vaccine*, (1987), Vol.5, no. 2, pp. 115-122 (“Simonsen”). This rejection has been rendered moot by the amendment of claim 1, and hence dependent claims 5 and 10, to include the language of non-rejected claim 2 as set forth above. Regardless, Simonsen would not render Applicants’ claimed invention obvious as it is directed to the study of humans and not to animals as in Applicants’ claimed invention. Since Simonsen is silent as to animals, Simonsen would not provide the requisite teaching or suggestion to modify its teachings and arrive at Applicants’ claimed invention with any expectation of success. Applicants respectfully request this rejection be withdrawn.

**VIII. Conclusion**

Applicants respectfully request reconsideration of the subject application in view of the above amendments and remarks. The subject application is now in condition for allowance and early notice to that effect is respectfully solicited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 16-1445. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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